

SUPPLEMENTAL DECLARATION OF DR. MARC STERN

I, Marc Stern, MD, suffer from no disability which would disqualify me from swearing an oath, under penalty of perjury, hereby affirm:

1. This declaration serves as a supplement to my declaration of February 1, 2021, which contains my qualifications.

2. It is provided, *pro bono*, at the request of Nancy Tenney, counsel for Mr. Brian Farrell, to respond to the government's Response to Defendant for Reduction in Sentence, dated April 19, 2021, which I have reviewed.

3. The relevant clinician summary in this case is as follows:

July, 17, 2020 Mr. Farrell was examined by an unlicensed clinic worker for shortness of breath, a potentially serious, if not life-threatening clinical symptom. The lay worker instructed the staff to have Mr. Farrell seen by a licensed practitioner. The instruction was ignored. A licensed physician was aware that an unlicensed employee was practicing medicine (or nursing), but took no action.

August 10, 2020 (Three and a half weeks after initial presentation) A physician examined the patient for brief pauses in his heartbeat along with fatigue and brief episodes of shortness of breath which were getting worse over the preceding few months. The physician also discovered a heart murmur. This constellation of symptoms and findings could be related to a number of serious medical conditions and failure to address them placed Mr. Farrell at a significant risk of serious harm. Based on these findings and concern for a serious cardiopulmonary condition, the physician ordered an electrocardiogram and a referral to a cardiac specialist, and started Mr. Farrell on a medication for his heart and another medication for his lungs.

October 14, 2020- (Three months after initial presentation) Mr. Farrell inquired as to the status of the cardiologist referral and echocardiogram. Prison medical staff ignored his inquiry.

April 7, 2021 (Nine months after initial presentation) Due to continuing shortness of breath, a chest x-ray was performed. No abnormality was seen on the chest x-ray.¹

April 19, 2021 (Ten months after initial presentation) As of this date (the date of the government's response), the prison medical staff had taken no further steps to address Mr. Farrell's constellation of symptoms and findings.

4. In its response, the government confirms this fact set, and does not refute any of the serious errors the fact set lays out, including:

- Practice of medicine by a lay clinic worker
- Awareness of, and failure to address, such practice on the part of the supervising licensed physician
- Failure of the prison health care staff to execute the physician's order for an echocardiogram, despite: the physician's concern for a serious medical condition; the patient's inquiry; the passage of nine and a half months; and my bringing this to the government's attention via my declaration of February 1, 2021
- Failure of the prison health care staff to execute the physician's order for a consultation with a heart specialist, despite: the physician's concern for a serious medical condition; the patient's inquiry; the passage of nine and a half months; and my bringing this to the government's attention via my declaration of February 1, 2021

5. The government does not provide any explanation for these errors.

6. With regard to risks to Mr. Farrell due to COVID-19, the government indicates that Mr. Farrell has been vaccinated, but that 42% or fewer of other residents at his facility, have been vaccinated.

7. While it is good that Mr. Farrell and some of his fellow residents have been vaccinated, Mr. Farrell remains at elevated risk of contracting COVID-19 infection for several reasons:

¹ The actual x-ray conclusion was "No acute cardiopulmonary disease." It is very important to understand what this statement does and does not mean. It means that evidence of cardiopulmonary disease *limited to that which would be visible on an x-ray* was not seen. Not all cardiopulmonary disease will be manifest by visible changes on an x-ray. Further, the cause of Mr. Farrell's constellation of symptoms may be caused by disease other than disease in the cardiopulmonary system. Thus, the x-ray report does not mean that Mr. Farrell does not have a serious cardiopulmonary disease as the cause of his constellation of symptoms and findings nor does it rule out a non-cardiopulmonary cause, it simply rules out certain cardiopulmonary diseases.

- He resides at a correctional institution. The risk of infection is approximately five times higher in a correctional institution compared to the community.
- The vaccine, while highly effective, is not 100% effective at preventing infection.
- We do not know yet for sure if the vaccine is effective against all the new variants of the SARS-CoV-2 virus circulating in the U.S.
- A vaccination level of 42% or lower among the residents is not nearly enough to achieve herd immunity.
- According to the BOP website, only 169 officers (about half of the officers) at FCI Sheridan have been vaccinated. Most infections are introduced into prisons by staff. Thus, this very low level of vaccination among staff means that the risk of introduction of COVID-19 infection into the facility remains high.


8. In addition to being at increased of contracting COVID-19, according to the Centers for Disease Control, Mr. Farrell's history of smoking increases his risk for serious complications from COVID-19 should he become infected, including hospitalization, respiratory insufficiency, and death.

9. In summary, Mr. Farrell presented to the health care staff at FCI Sheridan with a constellation of symptoms and findings that may be a manifestation of a serious medical condition. Ten months after first presenting with symptoms and other objective evidence of a serious medical condition, despite orders from a physician, an inquiry from the patient, and notification from the patient's attorney, including a declaration from me – all providing sufficient subjective awareness to the FCI medical staff of the presence of a serious risk – other than obtaining a single chest x-ray, the medical staff at FCI Sheridan has demonstrated an unwillingness or inability to address this medical condition. The government states that "It is not even clear that Farrell is ill, let alone that his illness is so severe that release is necessary." (Dkt. 92 at 8) This is a preposterous statement: It is not clear that Mr. Farrell is ill because of the health care staff's failure to do what is necessary to make a diagnosis. The fire department cannot argue that it was reasonable not to respond to the fire when it knew its phone was off the hook.

10. Based on the fact that (1) Mr. Farrell is at risk for a serious cardiopulmonary (or other organ system) medical condition that medical staff continues to fail to adequately address, (2) FCI Sheridan allows employees attending to Mr. Farrell to practice medicine or nursing without a license, (3) Mr. Farrell is at increased risk of contracting COVID-19 at FCI Sheridan, and (4) if

and when he contracts COVID-19, Mr. Farrell is at increased risk of a serious complication, incarceration at the BOP facility at Sheridan places him at significant risk of serious harm.

Executed this 24th day of April, 2021, in Tumwater, Washington.



Dr. Marc Stern, MD, MPH